



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA-HQ-OW-2018-0669; FRL-9987-17-OW]

State of North Dakota Underground Injection Control Program; Class I, III, IV, and V Primacy Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve an application from the State of North Dakota under the Safe Drinking Water Act (SDWA) to revise the State's existing Underground Injection Control (UIC) program for Class I, III, IV, and V injection wells located within the State, except those in Indian country. North Dakota is revising its UIC Class I, III, IV, and V program regulations to transfer primary enforcement authority from the North Dakota Department of Health to the North Dakota Department of Environmental Quality.

DATES: Comments must be received on or before [INSERT DATE 35 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. A public hearing is scheduled to be held on [insert date 35 days from publication in the Federal Register], from 2 p.m. to 5 p.m. and 6 p.m. to 8 p.m., central daylight time. The hearing will be held only if requests are received within 30 days of publication. If no requests are received by [insert date 30 days from publication in the Federal Register], the hearing will be cancelled. Confirmation or cancellation of the public hearing will be announced on [insert date 30 days from publication in the Federal Register], on the EPA Region VIII's website at: <https://www.epa.gov/uic/underground-injection-control-epa->

region-8-co-mt-nd-sd-ut-and-wy.

ADDRESSES:

Hearing location: North Dakota Department of Health's fourth floor Conference Room, 918 East Divide Avenue, Bismarck, North Dakota

Requests for a public hearing may be mailed or emailed to: Omar Sierra-Lopez, U.S.

Environmental Protection Agency, Region VIII, Mail Code: 8WP-SUI, 1595 Wynkoop Street, Denver, Colorado 80202-1129, or sierra-lopez.omar@epa.gov.

Docket Review and Comments Requested: The application and supplemental docket materials are available electronically on <https://www.regulations.gov>, identified by Docket ID No. **EPA-HQ-OW-2018-0669**. Submit your comments to the *Federal eRulemaking Portal*:

<https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comments received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system).

For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kyle Carey, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 564-2322; fax number: (202) 564-3754; email address: carey.kyle@epa.gov, or Omar Sierra-Lopez, Underground Injection Control Unit, Safe Drinking Water Program, Office of Water Protection (8WP-SUI), U.S. Environmental Protection Agency, Region VIII, 1595 Wynkoop Street, Denver, Colorado 80202-1129; telephone number: (303) 312-7045; fax number: (303) 312-7517; email address: sierra-lopez.omar@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The EPA approved North Dakota's UIC program as meeting the requirements for primary enforcement responsibility (primacy) for Class I, III, IV, and V injection wells, under section 1422 of the Safe Drinking Water Act, on September 21, 1984. The State is revising its UIC Class I, III, IV, and V program statutes and regulations to transfer this authority from the North Dakota Department of Health to the North Dakota Department of Environmental Quality.

II. Legal Authorities

These regulations are being promulgated under authority of sections 1422 and 1450 of the SDWA, 42 U.S.C. 300h-1 and 300j-9.

A. Revision of State UIC Programs

As required by section 1421 of the SDWA, the EPA promulgated minimum requirements in the Code of Federal Regulations (CFR) at 40 CFR part 145, for effective State UIC programs, to prevent underground injection activities that endanger underground sources of drinking water

(USDWs). Under section 1422 of the SDWA, once the EPA approves a State UIC program, the State has primary enforcement responsibility for underground water sources. A State may revise its UIC program as provided under 40 CFR 145.32(a) and by following the procedures described under 40 CFR 145.32(b), which require the State to submit a modified program description, an Attorney General's statement, a Memorandum of Agreement, or other such documentation as the EPA determines to be necessary under the circumstances (40 CFR 145.32(b)(1)). States with approved programs are required to notify the EPA whenever they propose to transfer all or part of the approved State agency to any other State agency and to identify any new division of responsibilities amongst the agencies involved. Organizational charts required in the State's original primacy approval package must be revised and resubmitted. The new agency is not authorized to administer the program until approval by the Administrator (40 CFR 145.32(c)).

All revisions to the UIC program would be federally enforceable as of the effective date of the EPA's approval of the respective revision and 40 CFR part 147 codification. The State plans to rely on the date when the EPA signs the final notice for purposes of notifying the State legislature that the EPA has approved these revisions, which will provide for the transfer authority from the North Dakota Department of Health to the North Dakota Department of Environmental Quality (NDDEQ) to be effective under State law. Thus, prior to the effective date of this approval, the State intends to take the necessary additional steps as specified in S.L. 2017, ch. 199, Section 1, to ensure that the NDDEQ rules would become federally enforceable on the effective date of the EPA's approval and codification of the approved program in 40 CFR part 147.

Consistent with the EPA Guidance 16, the EPA considers State-initiated program

revisions to transfer all or part of any program from the approved authority to another State agency as substantial program revisions. Under the EPA regulations, this means there is an opportunity for public comment and to request a public hearing (40 CFR 145.32(b)(2)).

B. Indian Country

The EPA's approval of North Dakota's application to transfer its SDWA UIC Class I, III, IV, and V primary enforcement authority from the North Dakota Department of Health to the North Dakota Department of Environmental Quality does not extend to Indian lands. Pursuant to the EPA's UIC regulations at 40 CFR 144.3, Indian lands "means 'Indian country' as defined in 18 U.S.C. 1151." As defined in 18 U.S.C. 1151, Indian country generally includes lands within the exterior boundaries of the following Indian reservations located within North Dakota: The Fort Berthold Indian Reservation, The Spirit Lake Reservation, The Standing Rock Sioux Reservation, and The Turtle Mountain Reservation; any land held in trust by the United States for an Indian tribe; and any other areas that are Indian country within the meaning of 18 U.S.C. 1151. The EPA, or eligible Indian tribes, as appropriate, will retain responsibilities under the SDWA UIC program for Class I, III, IV, and V injection wells in Indian country.

III. North Dakota's Application

A. Notice of Completion

On September 18, 2018, the EPA received a complete program revision package from the State of North Dakota, requesting approval of its revised UIC regulations for Class I, III, IV, and V injection wells, to transfer primary enforcement authority from the North Dakota Department of Health to the North Dakota Department of Environmental Quality. The EPA has determined the application contains all the required elements; the application and supplemental

materials are available electronically at <https://www.regulations.gov>; and a copy of the application can be accessed for inspection and copying at: The EPA Region VIII, 1595 Wynkoop Street, Denver, Colorado 80202-1129, by contacting Omar Sierra-Lopez at: telephone number: (303) 312-7045; fax number: (303) 312-7517; email address: sierra-lopez.omar@epa.gov. Public comments are requested, and a public hearing will be held if requests are received within 30 days of publication (see **ADDRESSES** for further information on how to request a public hearing).

The UIC program revision package from the State of North Dakota includes revised versions of: 1) the description of the State's UIC program (40 CFR 145.23); 2) copies of all applicable State statutes, regulations, and forms (40 CFR 145.22(a)(5)); 3) the Attorney General's statement that the State has adequate legal authority to carry out the program described and to meet the requirements of 40 CFR part 145; and 4) the Memorandum of Agreement between the State of North Dakota and the EPA's Region VIII Administrator (40 CFR 145.25).

B. Public Participation Activities Conducted by the State of North Dakota

On April 12, 2018, the North Dakota Department of Environmental Quality provided public notice of its intent to amend and adopt North Dakota's 1422 Underground Injection Control Rules. The public notice was published in 52 North Dakota newspapers. Written comments on the proposed rule changes were accepted between April 12, 2018 and May 31, 2018; no comments were received. A public hearing regarding the UIC rules was held on March 21, 2018; the hearing was unattended.

C. Public Participation Activities Conducted by the EPA

On [insert date of publication in the Federal Register], a public notice announcing this proposed approval, request for public comment, and notice of a public hearing to be held on

[insert date 35 days from publication in the Federal Register], was published in the Bismarck Tribune and posted to the EPA Region VIII's website at: <https://www.epa.gov/uic/underground-injection-control-epa-region-8-co-mt-nd-sd-ut-and-wy>. Confirmation or cancellation of the public hearing will be announced on [insert date 30 days from publication in the Federal Register] and on the EPA Region VIII's website at: <https://www.epa.gov/uic/underground-injection-control-epa-region-8-co-mt-nd-sd-ut-and-wy>. For information regarding the public hearing, including a request to hold a hearing, please contact Omar-Sierra Lopez, U.S. Environmental Protection Agency, Region VIII, Mail Code: 8WP-SUI, 1595 Wynkoop Street, Denver, Colorado 80202-1129, or sierra-lopez.omar@epa.gov.

IV. The EPA's Proposed Action

A. What is the EPA Proposing?

In this action, the EPA is proposing to approve the State of North Dakota's application to transfer its Class I, III, IV, and V primary enforcement authority from the North Dakota Department of Health to the North Dakota Department of Environmental Quality and to make conforming changes to its regulations to reflect such transfer. Regulations under 40 CFR part 147 set forth the applicable UIC programs for each of the States. This rule would update 40 CFR part 147 subpart JJ to reflect the transfer of authority.

Support of this proposed approval is part of the public record in the EPA's Docket No. **EPA-HQ-OW-2018-0669**. When finalized, this action will amend 40 CFR part 147 Subpart JJ to incorporate by reference the revised EPA-approved State statutes and regulations. The EPA will continue to administer its UIC program for Class I, III, IV, and V injection wells in Indian country.

The EPA will continue to oversee the State of North Dakota's administration of UIC Class I, III, IV, V and VI programs as authorized under the SDWA. Part of the EPA's oversight responsibility will require State quarterly reports of non-compliance and annual UIC performance reports pursuant to 40 CFR144.8. The Memorandum of Agreement between the EPA and the State of North Dakota, signed by the Regional Administrator on September 18, 2018, provides the EPA with the opportunity to review and comment on all draft permits.

B. What codification decisions is the EPA proposing in this rule?

In this rule, the EPA is proposing to finalize the federal regulatory text that incorporates by reference the federally authorized North Dakota UIC program for Class I, III, IV, and V injection wells, except those in Indian country. In accordance with the requirements of 1 CFR 51.5, we are proposing to finalize the incorporation by reference of the North Dakota rules described in the amendments to 40 CFR part 147 set forth below. The EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the U.S. Environmental Protection Agency, Region VIII, Library 2nd Floor, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

The EPA will revise the binder at 40 CFR 147.1751 that contains the EPA-approved North Dakota Statutes and Regulations for Well Classes I, III, IV, V, and VI. This binder will be incorporated by reference into 40 CFR 147.1751. The EPA will also revise the table listing the EPA-approved North Dakota Statutes and Regulations for Well Classes I, III, IV, V, and VI in 40 CFR 147.1751. Section 147.1751 also references the Memorandum of Agreement, the statement of legal authority (the Attorney General's Statement), and the Program Description, which are approved as part of the UIC program authorized under the SDWA.

V. Statutory and Executive Order Reviews

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. *Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. *Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040-0042. Reporting or record-keeping requirements will be based on the State of North Dakota UIC Regulations, and the State of North Dakota is not subject to the PRA.

D. *Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule does not impose any requirements on small entities as

this rule approves the State of North Dakota's UIC program revisions. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. The EPA's approval of the State of North Dakota's program revisions will not constitute a federal mandate because there is no requirement that a State establish UIC regulatory programs and because the program is a State, rather than a federal program.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action contains no federal mandates for tribal governments and does not impose any enforceable duties on tribal governments. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it approves the State of North Dakota’s UIC program revisions.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA has determined that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action will simply provide that the State of North Dakota is transferring its primary enforcement authority for its Class I, III, IV, and V wells, pursuant to which the State of North Dakota will be implementing and enforcing a State UIC regulatory program that is as stringent as the existing federal program.

List of Subjects in 40 CFR Part 147

Environmental protection, Indian lands, Incorporation by reference, Intergovernmental relations,
Reporting and recordkeeping requirements, Water supply.

Dated: November 20, 2018.

Andrew R. Wheeler,
Acting Administrator.

For the reasons set out in the preamble, the Environmental Protection Agency is proposing to amend 40 CFR part 147 as follows:

**PART 147 – STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND
INJECTION CONTROL PROGRAMS**

1. The authority citation for part 147 is revised to read as follows:

Authority: 42 U.S.C. 300f *et seq.*; and 42 USC 6901 *et seq.*

2. Amend § 147.1751 by:

- a. Revising the introductory text and paragraph (a);
- b. Revising paragraph (b)(2) and removing paragraphs (b)(3) and (b)(4);
- c. Revising paragraphs (c), (d), (e), (f), (g), (h); and
- e. Adding paragraph (i).

The revisions and addition read as follows:

§ 147.1751 State-administered program—Class I, III, IV, V and VI wells.

The UIC Program for Class I, III, IV, and V wells in the State of North Dakota, except those located on Indian lands, as defined under 40 CFR 144.3, is the program administered by the North Dakota Department of Environmental Quality, approved by the EPA pursuant to section 1422 of the SDWA. Notification of this approval was published in the *Federal Register* on [date of publication of the final rule in the Federal Register]; the effective date of this program is (date to be determined at time of final decision but will be no less than 30 days after publication in the *Federal Register*). The UIC Program for Class VI wells in the State of North Dakota, except those located on Indian lands, is the program administered by the North Dakota Industrial

Commission (NDIC), approved by the EPA pursuant to section 1422 of the SDWA. Notification of this approval was published in the *Federal Register* on April 24, 2018; the effective date of the NDIC UIC Class VI program is April 24, 2018. The State-administered UIC programs for Classes I, III, IV, V, and VI consist of the following elements, as submitted to the EPA in the State's program applications.

- (a) The requirements set forth in the State statutes and regulations cited in the binder entitled "EPA-Approved North Dakota SDWA §1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI", dated December 2018, and Table 1 to paragraph (a) of this section are incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of North Dakota. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the North Dakota regulations that are incorporated by reference in this paragraph (a) may be inspected at the U.S.

Environmental Protection Agency, Region VIII, Library 2nd Floor, 1595 Wynkoop Street, Denver, Colorado 80202-1129; Water Docket, EPA Docket Center (EPA/DC), EPA WJC West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460; and the National Archives and Records Administration (NARA). If you wish to obtain materials from the EPA Regional Office, please call (303) 312-1226; for materials from a docket in the EPA Headquarters Library, please call the Water Docket at (202) 566-2426. For information on the availability of this material at NARA, call (202) 741-6030, or go to www.archives.gov/federal-register/cfr/ibr-locations.html

Table 1 to paragraph (a) EPA-Approved North Dakota SDWA §1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI

State citation	Title/subject	State effective date	EPA approval date
North Dakota Century Code Sections 38-12-01 – 38-12-03	Regulation, Development and Production of Subsurface Minerals	1980	September 21, 1984, 49 FR 37066
North Dakota Century Code Sections 61-28-02 and 61-28-06	Control, Prevention and Abatement of Pollution of Surface Waters	1989	March 6, 1991, 56 FR 9418
North Dakota Century Code Sections 61-28.1-01 – 61-28.1-12	Safe Drinking Water Act	2018	[insert FR citation of final rule]
North Dakota Administrative Code Sections 33.1-25-01-01 – 33.1-25-01-18	Underground Injection Control Program	2018	[insert FR citation of final rule]
North Dakota Administrative Code Sections 43-02-02-01 – 43-02-02-50	Subsurface Mineral Exploration and Development	1986	March 6, 1991, 56 FR 9418
North Dakota Administrative Code Sections 43-02-02.1-01 – 43-02-02.2-19	Underground Injection Control Program	1984	September 21, 1984, 49 FR 37066
North Dakota Century Code Sections 38-22-01 – 38-22-23	Carbon Dioxide Underground Storage	2009	April 24, 2018, 83 FR 17761
North Dakota Administrative Code Sections 38-08-16 – 38-08-17	Control of Oil and Gas Resources	2013	April 24, 2018, 83 FR 17761
North Dakota Administrative Code Sections 43-05-01-01 – 43-05-01-20	Geologic Storage of Carbon Dioxide	2013	April 24, 2018, 83 FR 17761

(b)***

(2) North Dakota Administrative Code Article 33-22 (Practice and Procedure) (1983).

(c) The Memorandum of Agreement for the Class I, III, IV, and V Underground Injection Control Program between EPA Region VIII and the North Dakota Department of Environmental Quality, signed by the EPA Regional Administrator on September 18, 2018.

- (d) The statement of legal authority, “Class I, III, IV, and V Underground Injection Control Program, Attorney General’s Statement,” signed by the Assistant Attorney General of North Dakota on July 30, 2018, and “Supplement to the Attorney General Statements Relating to Programs Being Transferred to the North Dakota Department of Environmental Quality” signed by the Assistant Attorney General of North Dakota on October 23, 2018.
- (e) The Class I, III, IV, and V Underground Injection Control Program Description and any other materials submitted as part of the program revision or as supplements thereto.
- (f) The Memorandum of Agreement for the Class VI Underground Injection Control Program between EPA Region VIII and the North Dakota Industrial Commission, signed by the EPA Regional Administrator on October 28, 2013.
- (g) The Memorandum of Understanding for Class VI between the North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division and the North Dakota Department of Health, Water Quality Division Related to the Underground Injection Control Program, signed on June 19, 2013.
- (h) The statement of legal authority, “Class VI Underground Injection Control Program, Attorney General’s Statement,” signed by the Attorney General of North Dakota on January 22, 2013.
- (i) The Class VI Underground Injection Control Program Description and any other materials submitted as part of the program revision or as supplements thereto.

[FR Doc. 2018-25893 Filed: 12/3/2018 8:45 am; Publication Date: 12/4/2018]